IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 26005 of 2005(U)

OP.371/2004 OF FAMILY COURT, THIRUVALLA
.....

PETITIONER:

C.C. MATHEW,
CHANDANAPARAMBIL HUSE, KUTTAPPUZHA, THIRUVALLA.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. RACHEL JOSEPH,
PRETTY VILLA, CHENNEERKARA P.O., KULANADA.

2. CHERISH JOSEPH MATHEW (MINOR),
REPRESENTED BY RACHEL JOSEPH, RESIDING AT -DO- -DO

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007 THE COURT ON 02/07/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 26005/2005 U

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE OP NO. 371/2004 FILED BEFORE THE FAMILY COURT, THIRUVALLA BY THE RESPONDENTS DT. 09/06/04.

EXT.P2. COPY OF THE OBJECTION FILED BEFORE THE FAMILY COURT DT.NIL.

EXT.P3. COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE FAMILY COURT, DT. 19/7/2005.

EXT.P4. COPY OF THE JUDGMENT IN WPC NO. 22240/2005 DT. 27/7/05.

EXT.P5. COPY OF THE JUDGMENT IN WP NO. 24032/2005 OF THIS COURT.

EXT.P6. COPY OF THE ORDER IN IA NO. 1430/05 IN OP NO. 371/04 ON THE FILES OF THE FAMILY COURT, THIRUVALLA DT. 09/08/05.

True copy

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.26005 of 2005

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Dated: 2nd July, 2007

JUDGMENT

The respondents in O.P.No.371 of 2004 (Ext.P1) before the Family Court, Thiruvalla are aggrieved by Ext.P6 order passed by that court holding that the Family Court is having jurisdiction to entertain Ext.P1 O.P. filed by the respondents, widow and minor son respectively of late Joseph Mathew, son and brother respectively of petitioners 1 and 2 for recovery of her patrimony and also amounts allegedly advanced by late Joseph Mathew to the 2nd petitioner. Contending that the petitioners who were counter petitioners 1 and 2 in the O.P. are not parties to the marriage an objection was filed raising the plea that the family court has no jurisdiction to entertain the petition. Ext.P3 application was filed by the petitioners requesting for a decision on the question of jurisdiction as a preliminary question. This court also under Ext.P4 judgment directed the Family Court, Thiruvalla to decide the question of jurisdiction as a preliminary issue. The question was decided by the learned Judge of the Family Court under Ext.P6 order against the petitioners who complain that they had to approach this court and obtain directions in Ext.P5 judgment even for getting a certified copy of Ext.P6.

Impugning Ext.P6 on various grounds the petitioners have filed this Writ Petition under Article 227 of the Constitution seeking to set aside Ext.P6 and to hold that Ext.P1 is not maintainable before the Family Court.

2. I have heard the submissions of Mr.M.V.S.Nampoothiry, Advocate for the petitioner and Mr.Mathews Jacob, Senior Advocate on behalf of the respondents.

3. Mr.M.V.S.Nampoothiry would draw my attention to Section 7 (c) of the Family Courts Act, 1984 and urge that Ext.P1 being not a proceeding between the parties to the marriage can never be maintainable before the Family Court. I was taken through Ext.P1 in full by the learned counsel who rely on judgments of this court in **Krishnan Nambudiri v. Thankamani** (1994(1) KLT 607), **Kamalasanan v. Valsala** (1994(1) KLT 737) and also **Devaki Antharjanam v. Narayanan Namboodiri** (2006(2) KLT 1022). The learned counsel also relied on paragraph five of the judgment of the Division Bench of this court in **Suprabha v. Sivaraman** (2006(1) KLT 712) to contend that the words "parties to a marriage" in the context of Section 7(c) cannot be given such a wide interpretation as to include all those who are interested in the welfare of the couple or

those who take part to the marriage ceremony and that the suit must be between the husband and the wife with respect to the property of the parties or either of them.

4. Mr.Mathews Jacob, Senior Advocate would place strong reliance on the judgment of the Supreme Court in **Abdul Jaleel v. Shahida** (2003(2) KLT 403) and submit that the Family Court's jurisdiction under Section 7(c) will extend to all matters in relation to the properties of the spouses or of either of them irrespective of whether the property is claimed during the subsistence of the marriage or otherwise. The legislative object behind the enactment of the Family Courts Act should not be forgotten, so submitted the learned Senior Counsel. According to him, the contention that the Family Court has no jurisdiction was not taken by the petitioners even in the objections which they filed to Ext.P1. Only after the petitioners' evidence was over and the case stood posted for their evidence, they filed the interlocutory application raising the question of jurisdiction. They have submitted to the jurisdiction of the court and since this is not a case where the court lacks inherent jurisdiction, the Family Court was right in repelling the contention that it lacks in jurisdiction.

5. I have considered the rival submissions addressed before me in the light of the ratio emerging from the various decisions which were cited before me by the learned counsel and the statutory provision.The question that arises for consideration is whether Ext.P6 order of the Family Court is vitiated to the extent of warranting interference under the visitorial jurisdiction of this court under Article 227 of the Constitution. A reading of Ext.P6 will show that the learned Judge of the Family Court has repelled the contention that the court has no jurisdiction mainly on two reasons. Firstly, the petitioners have submitted to jurisdiction of the court by filing a written objection touching the merits of the claims in Ext.P1 O.P. and by participating in the trial till the O.P. was posted for their evidence. Secondly, the learned Judge noticed the legislative intendment behind the promulgation of the Family Courts Act and found that it will be injustice to relegate the petitioners (the respondents herein) a hapless widow and a minor boy to the civil court. She also tried to distinguish the decisions which were cited before her (obviously the same decisions which were cited before me by Mr.M.V.S.Nampoothiry) by saying those decisions do not apply since the question decided therein was whether the jurisdiction of the civil

court was ousted.

6. Without meaning disrespect to the learned Judge of the Family Court it must be stated at the very outset that she was not correct in her view that the decisions cited before her on behalf of the petitioners herein are inapplicable since they pertain to ouster of jurisdiction of the civil court. Those decisions do deal with the question of Family Court's exclusive jurisdiction on like issues and were not totally irrelevant. But at the same time the learned Judge's recourse to the legislative intendment underlying Family Courts Act, 1984 was not out of place and I notice that the same has the support of the observations of the Supreme Court in **Abdul Jaleel v. Shahida** (supra). The Supreme Court noticed that the Family Courts Act was enacted to provide for establishment of Family Courts with a view to promote conciliation in and to secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The court further noticed on perusing of the Statement of Objects and Reasons of the Act that the Act inter alia seeks to exclusively provide within the jurisdiction of the Family Courts all matters relating to the property of the spouses or either of them and found that the jurisdiction of the Family Courts extends

inter alia in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other irrespective of whether the property is claimed during the subsistence of a marriage or otherwise. The court also found that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally and that ascription of any restricted meaning to the statutory provision would frustrate the object for which Family Courts are set up. Thus it is clear from the judgment of the Supreme Court that a claim by one of the parties to the marriage even after the other party has passed away will come within the jurisdiction of the Family Court provided the claim is covered any of the clauses (a) to (g) under the Explanation to Section 7 of the Family Courts Act.

7. A careful reading of Ext.P1 will show that the first claim raised therein is for return of the patrimony which was paid on behalf of the 1st petitioner at the time of betrothal of the marriage between the first petitioner and her late husband. The second claim is claim for return of amounts allegedly advanced by the late husband of the petitioner to his brother, the 2nd counter petitioner on an agreement that he and his father the first counter petitioner would execute a

conveyance deed regarding the property and the house therein in favour of the late husband. Construing clause (d) of the Explanation to Section 7 of the Family Courts Act liberally, in keeping with the legislative object underlying the Family Courts Act, the above claim can be understood as a claim covered by that words. To a considerable extent the above view has support of the Division Bench judgment in **Suprabha v. Sivaraman** (supra). The relief which the first petitioner seek in respect of that claim also obviously has arisen only out of the matrimonial relationship between the first petitioner and her late husband since it is accommodate the wife and child separately that the late Joseph Mathew entered into the transaction virtually a family deal. In this view of the matter also the impugned order can be approved.

8. Moreover as rightly noticed by the Judge of the Family Court the contention that the court does not have jurisdiction was not raised in the written statement. The petitioners felt like raising such a contention only after the evidence of the plaintiff was over and the case was posted for defendants evidence. At any rate, this can never be a case of the court lacking inherent jurisdiction and the petitioners cannot legitimately claim of sustaining any prejudice on

account of entertainment and consideration of the O.P. by the Family Court presided over by a District Judge who is higher in the judicial hierarchy than the Munsiff or the Sub Judge who deal with ordinary civil suits. Above all, I am of the view that the supervisory jurisdiction of this court under Article 227 is not to be invoked in this case since that will amount to undoing a justice oriented approach taken in favour of one of the parties to the litigation, a widow found to be in misery. The challenge against Ext.P6 will fail and the Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**